APPEAL NO. 040214
FILED MARCH 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on January 5, 2004. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the sixth quarter.

The appellant (carrier) appealed, contending that the claimant failed to satisfy the good faith and direct result criteria and in determining that the claimant is entitled to SIBs for the sixth quarter. The claimant responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The carrier appeals both the good faith effort to obtain employment requirement of Section 408.142(a)(4) and Rule 130.102(b)(2) and the direct result criterion of Section 408.142(a)(2) and Rule 130.102(b)(1). The parties stipulated that the qualifying period for the sixth quarter was from May 7 through August 5, 2003. It appears undisputed that the claimant's compensable injury included "both knees, her left shoulder and . . . her lower back." The claimant sought to meet the good faith requirement by complying with Rule 130.102(d)(4).

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer found that Dr. H, the carrier's required medical examination doctor, had provided the narrative which specifically explains how the injury causes a total inability to work and did not constitute any other "medical record" which showed that the claimant had an ability to work. Dr. H's report dated July 29, 2003, recites the results of his physical examination and concludes:

> It is my opinion that from a practical standpoint this lady will not return to any type of gainful employment. . . .
>
> * * * *
>
> I suppose from a technical standpoint this lady could be transported to and from a workplace in which she did work such as answering a telephone or perhaps some reception type of work. Other than that her restrictions

> would be extreme with no walking, no lifting, and no climbing. Therefore, it is my opinion that with her injuries and the consequences, as well as her age that she is not a candidate for any future employment.

The hearing officer commented that the restrictions Dr. H set amounted to "less than sedentary, because even a sedentary job requires getting up and moving. . . ." The hearing officer's determination that this report meets the requirements of Rule 130.102(d)(4) is supported by the evidence.

Regarding the direct result requirement, the Appeals Panel has long held that the direct result requirement may be met by showing a serious injury with long-lasting effects, which precludes a return to the preinjury employment. Texas Workers' Compensation Commission Appeal No. 011443, decided August 1, 2001. The hearing officer found that the claimant was unemployed as a direct result of her impairment. The hearing officer's determination on this point is supported by sufficient evidence.

The carrier also argues that the claimant had an ability to work and did not look for work. Having affirmed the determination that the claimant met the definition of good faith under Rule 130.102(d)(4), the claimant was not required to additionally satisfy the requirement of Rule 130.102(e) to document a job search effort in each week of the qualifying period. Texas Workers' Compensation Commission Appeal No. 000321, decided March 29, 2000.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Reliance National Indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR IN THE RESULT:

_____
Judy L. S. Barnes
Appeals Judge